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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. RAKESH SINGH, Defendant and Appellant.	A142293 (Alameda County Super. Ct. No. CH54872)
In re RAKESH SINGH, on Habeas Corpus.	A151925

Defendant Rakesh Paul Singh was convicted of aggravated mayhem and sentenced to life in prison for having hired men to commit an attack on his ex-wife. On appeal, defendant argues the court improperly dissuaded the jury from requesting a readback of testimony by certain witnesses and erred in failing to conduct a *Marsden*[1] hearing in response to a post-trial letter from defendant.

While his appeal was pending, defendant filed a petition for writ of habeas corpus alleging that he received ineffective assistance of counsel and was convicted based upon materially false evidence. Having found that defendant articulated a prima facie case for relief, this court issued an order to show cause returnable to the trial court. Following briefing and a hearing, the trial court denied defendant's petition. Thereafter, defendant

[1] *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

filed a second petition for writ of habeas corpus repeating the same allegations based on the new evidentiary record. We consolidated for argument and decision defendant's petition with his pending appeal.[2]

Having reviewed the record on appeal and the trial court proceedings on the habeas petition, we find no error. Accordingly, we shall affirm the judgment and deny the petition.

Factual and Procedural Background

Defendant was charged with and convicted of one count of aggravated mayhem (Pen. Code, § 205)[3] and one count of conspiracy to commit aggravated mayhem (§ 182, subd. (a)(1)). He was sentenced to life in prison on the first count and a second life term on the conspiracy count was stayed pursuant to section 654.

The following evidence was presented at trial:

Ricardo Rivera testified, pursuant to a plea agreement with the prosecution, that he helped defendant orchestrate the attack on defendant's ex-wife. Rivera met defendant through a mutual acquaintance named Vance Howeth. In late January 2013, Howeth called Rivera because he wanted his help as a driver for "some job." Around the same time, Rivera received a text from Howeth that read, "A client needs a job done." In response, Rivera met Howeth and defendant on Auto Mall Parkway in Fremont and drove them to a nearby house. When they arrived at the house, defendant told Rivera that the job involved an assault on defendant's ex-wife. Before getting out of the car, Howeth said "[s]omebody's going to get cut." Howeth headed towards the house but returned to the car shortly thereafter saying that the victim had already left the house. After they left the neighborhood, Rivera told Howeth he did not appreciate having this type of job "sprung" on him. Howeth reassured Rivera that defendant was reliable and told him that Howeth previously had done a job for defendant that involved an assault on defendant's business partner.

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[2] Defendant's request for judicial notice of the record in the first habeas proceeding is granted.

[3] All statutory references are to the Penal Code unless otherwise noted.

Two days later, Rivera met with defendant at a Shell gas station. Defendant told Rivera that he wanted his wife's face to be cut because she was cheating. Defendant told Rivera he wanted the victim's purse and phone taken during the attack so it would look like a robbery.

A day or so later, Rivera mentioned to Donald Harbaugh and Morris Kurtz that he knew somebody who wanted to have a woman's face cut and indicated that they would get paid $250 each for the job. Harbaugh and Kurtz needed money and were interested in the job. Rivera told defendant he had found a "couple of guys" who were interested in the job. Defendant said he would pay for the job when he saw the victim's phone.

On the morning of February 11th, Rivera, Harbaugh and Kurtz drove to the victim's house in separate cars. When Harbaugh and Kurtz approached the victim's house, Rivera left. Kurtz later texted Rivera: "We're on our way back. Where do you want me to meet you. Things went wrong, but I'll discuss it when I see you." Later, Kurtz explained to Rivera that the victim fought back and they were not able to get her purse or phone.

Rivera met with defendant and told him that the victim's face had been cut but they did not get the purse or phone. Rivera described defendant as upset about the purse and phone but "a little bit happy regarding the actual assault." As planned, defendant left money in a newspaper for Kurtz to retrieve.

Evidence of texts exchanged between Rivera's and defendant's phones were introduced to corroborate Rivera's testimony. Some texts showed Rivera and defendant coordinating meetings. In one text to defendant, Rivera wrote, "Job will be completed tomorrow. Have 500 ready at Shell station" at "9:15 a.m., after it is completed." Rivera's testimony was also corroborated by cell phone records that showed both Rivera's and defendant's phones were within the same cell tower location near Auto Mall Parkway at the time of the meeting in January and that Rivera's, Harbaugh's and defendant's phones were all within range of the same cell phone tower just prior to the attack on February 11.

The victim testified about the attack and her history of domestic violence with defendant. She also testified that defendant told her that following a dispute, he had in the past, hired people to hurt a business associate.

Defendant denied any involvement in the attack on his ex-wife or his business associate. He claimed he met Rivera and a man named Flaco in a bar and struck up a conversation. After they had drinks together, Rivera offered to drive him home because defendant did not have a car. The next day he met Rivera and Flaco at a Jack-in-the-Box restaurant on Auto Mall Parkway because Rivera owed him breakfast after losing to him at a game of pool. Defendant offered various explanations for the texts exchanged between him and Rivera. For example, with respect to the text regarding the $500 payment, defendant claimed Rivera was referring to payment for yard work that Rivera was doing for defendant. Defendant said that he arranged to meet Rivera at the gas station to exchange money because Rivera needed to wash his truck after doing the yard work.

Discussion

I. The Direct Appeal

A. The court did not improperly dissuade the jury from requesting a readback of witness testimony.

Section 1138 reads, "After the jury have retired for deliberation, if there be any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the case, they must require the officer to conduct them into court. Upon being brought into court, the information required must be given in the presence of, or after notice to, the prosecuting attorney, and the defendant or his counsel, or after they have been called." Section 1138 requires a trial court to " 'satisfy requests by the jury for the rereading of testimony.' " (*People v. Box* (2000) 23 Cal.4th 1153, 1213, disapproved on other grounds in *People v. Martinez* (2010) 47 Cal.4th 911.)

Here, during the second morning of jury deliberations, the jury sent out a note requesting a readback of all of the testimony by defendant, Rivera, the victim and a fourth witness. After consulting with counsel, the court explained to the jury that the

testimony by these witnesses was taken over almost three full days so that it would take the court reporter "about a day and a half to two days" to prepare the transcript and "then it will take about three days to read it back. Okay? So that puts up some time into next week just on the [readback]. [¶] So I'm going to ask you this: I'm going to send you guys back to talk about this some more, see if you can narrow this down, okay? So it's not that we can't do [it]. It's just that it's very labor intensive, and [readback] takes about [as] much time as the live testimony did. [¶] It's a little bit shorter, because you get to read through when there's pauses, if the attorneys stop, take a sidebar, something like that wouldn't be on the record, but it's going to take—it might not take a full three days, but it might take more than two. [¶] So I'd like you guys, if you can, to narrow it down. If you have an issue you want read back on, that's something we can get relatively quickly. And by that, I mean if the issue is narrow enough, we could probably have that for you some time later today. [¶] So I'm going to ask you to send out another note, okay? And then in the meantime, continue to deliberat[e]." Thereafter, the jury responded with a second note requesting only the testimony by Rivera and defendant about their first meeting. After counsel agreed to the portions of the transcript to be read to the jury, the court instructed the jury on the readback procedure and the court reporter completed the readback.

Defendant contends the court violated Penal Code section 1138 and his right to due process by dissuading the jury from the full readback of the testimony it initially requested.[4] We disagree.

In *People v. Gurule* (2002) 28 Cal.4th 557, 650 the Court held that a trial court's explanation of the amount of time it would take to read back testimony did not amount to

[4] Defendant has arguably waived this claim of error. (See *People v. Hillhouse* (2002) 27 Cal.4th 469, 505 [suggesting that failure to object waives a defendant's claim that he was denied a fair trial based on a violation of section 1138, but ultimately not reaching the issue].) However, in light of the history of this case and to forestall further claims of ineffective assistance of counsel, we shall resolve the issue on its merits. (*People v. Cox* (1991) 53 Cal.3d 618, 682, disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.)

dissuading the jury from rehearing the testimony. (*Gurule, supra,* 28 Cal.4th at p. 650.) In that case, a juror requested readback of the testimony of three witnesses and the court explained the number of pages of testimony for each witness and approximately how long it would take. (*Ibid.)* After hearing the time estimate, the juror withdrew the request. (*Ibid.*) The trial court reiterated: " 'You have a right to have *anything* read back that you wish to have read back. And we will make the time and the reporters available.' " (*Ibid.*) The appellate court concluded "the trial court did not dissuade the jury from rehearing [the] testimony. Instead, it acted reasonably by inquiring whether the juror wished to hear the entire testimony or just some portion of it." (*Ibid;* see also *People v. Anjell* (1979) 100 Cal.App.3d 189, 202, fn. 4, 203, disapproved on another point in *People v. Mason* (1991) 52 Cal.3d 909, 943, fn. 13 [court's statement that jury was requesting "an awful lot of hours of testimony" did not impermissibly dissuade jury from exercising right to a readback where trial judge also "stressed the facts that a rereading of testimony was both feasible and would be ordered if requested"].)

Contrary to defendant's argument, the present case is indistinguishable from *Gurule.* The court did not ask the jury to change its request. The court merely informed the jury the length of time the readback would take and requested the jury return to the jury room to see if they could narrow the request. The court advised the jurors they were entitled to the full readback if that continued to be their request. Accordingly, we find no error in the court's handling of the requested readback.

B. The court was not required to conduct a Marsden hearing based on defendant's post-trial letter.

After his conviction, defendant sent a letter to the court "to share [his] story." Defendant stated that he was shocked by his conviction and felt he was not given an adequate opportunity to prove his innocence. Among other things, he complained that Harbaugh and Kurtz should have been called to testify and that the jury should have been given a full readback of Rivera's testimony. His letter reads in relevant part, "Mr. Harbaugh and Mr.[Kurtz] admit to the attack on February 11, 2013. In spite of this, Mr. Harbaugh and Mr. [Kurtz] were never called in to testify at trial. They even received plea

deals to testify, yet [the prosecutor] never ordered them to appear at trial. [The prosecutor] never brought Mr. Kurtz and Mr. Harbaugh to trial because there is no evidence which links me to the perpetrators of the heinous attack on my [ex-wife]." In closing, he asked the court to "re-evaluate [its] decision and save [his] life."

The court interpreted the letter as asserting, among other things, a motion for new trial based on a claim of ineffective assistance of counsel. The court conducted a hearing before concluding that defense counsel's decision not to call Harbaugh and Kurtz as witnesses was based on trial strategy and thus, not a basis for a new trial.

Defendant contends the court erred by failing to conduct a *Marsden* hearing once it determined that he was attempting to assert a motion for new trial on the basis of ineffective assistance of counsel. Relying on *People v. Stewart* (1985) 171 Cal.App.3d 388, 394–397 (*Stewart*), disapproved on other grounds in *People v. Smith* (1993) 6 Cal.4th 684, 691–696, defendant argues that the trial court had an independent duty to inquire as to whether his claims required appointment of substitute counsel prior to ruling on his motion for new trial. In *Stewart*, the court advised that "in hearing a motion for new trial based on incompetence of trial counsel, the trial court must initially elicit and fully consider the defendant's reasons for believing he was ineffectively assisted at trial. . . . If the claim is based upon acts or omissions that occurred at trial or the effect of which may be evaluated by what occurred at trial the court may rule on the motion for new trial without substituting new counsel. If, on the other hand, the claim of incompetence relates to acts or omissions that did not occur at trial and cannot fairly be evaluated by what occurred at trial, then, unless for other good and sufficient reason the court thereupon grants a new trial, the court must determine whether to substitute new counsel to develop the claim of incompetence." (*Stewart, supra*, at pp. 396–397)

In *People v. Gay* (1990) 221 Cal.App.3d 1065, 1070–1071, the court held, however, that "absent a request the court appoint substitute counsel to prepare and present a motion for new trial based on inadequate representation, the *Stewart* procedures concerning appointment of such counsel are not required." (*Id*. at p. 1071.) The court

explained that a trial judge "should not be obligated to take steps toward appointing new counsel where defendant does not even seek such relief." (*Id*. at p. 1070; see also *People v. Richardson* (2009) 171 Cal.App.4th 479, 484–485 ["[A] request for new trial based on a defendant's claim of ineffective assistance of counsel does not trigger the court's duty to conduct a *Marsden* hearing if the defendant's desire for substitute counsel is not made clear."].) Since *People v. Gay*, *supra*, 221 Cal.App.3d 1065 was decided, the Supreme Court has repeatedly advised that a trial court's obligation to conduct a *Marsden* hearing attaches "only when there is 'at least some clear indication by defendant,' . . . that defendant 'wants a substitute attorney.' " (*People v. Sanchez* (2011) 53 Cal.4th 80, 90; see also *People v. Dickey* (2005) 35 Cal.4th 884, 920 [" ' "Although no formal motion is necessary, there must be 'at least some clear indication by defendant that he wants a substitute attorney.' " ' "].)

Defendant acknowledges that his letter and comments to the court did not include a "clear and unequivocal request for new counsel." In fact, defendant did not express, even implicitly, any desire to have substitute counsel represent him either in his motion for new trial, at the hearing on the motion, or at sentencing. His complaints went primarily to decisions made by the court (with respect to readback) and the prosecutor (not to call Harbaugh and Kurtz), rather than to any inadequacy in his own counsel, and the trial court's brief inquiry in no way triggered any obligation to conduct a *Marsden* hearing where no request to substitute counsel had been made.

II. The Habeas Petition

Defendant's petition alleges that defense counsel rendered ineffective assistance by failing to interview Howeth and call him as a witness at trial and that defendant was convicted based on materially false testimony by Rivera.

A. Standard of Review

"Where, as here, the superior court has denied habeas corpus relief after an evidentiary hearing (viz., the hearing held on the order to show cause ordered in response to petitioner's first habeas corpus petition) and a new petition for habeas corpus is thereafter presented to an appellate court based upon the transcript of the evidentiary proceedings conducted in the superior court, 'the appellate court is not bound by the factual determinations [made below] but, rather, independently evaluates the evidence and makes its own factual determinations.' " (*In re Resendiz* (2001) 25 Cal.4th 230, 249, disapproved on other grounds in *Padilla v. Kentucky* (2010) 559 U.S. 356, 370, fn. omitted.) "While our review of the record is independent and 'we may reach a different conclusion on an independent examination of the evidence . . . even where the evidence is conflicting' [citation], any factual determinations made below 'are entitled to great weight . . . when supported by the record, particularly with respect to questions of or depending upon the credibility of witnesses the [superior court] heard and observed.' [Citations.] On the other hand, if 'our difference of opinion with the lower court . . . is not based on the credibility of live testimony, such deference is inappropriate.' " (*In re Resendiz*, *supra*, 25 Cal.4th at p. 249; *In re Bell* (2007) 42 Cal.4th 630, 639 [" ' "The central reason for referring a habeas corpus claim for an evidentiary hearing is to obtain credibility determinations [citation]; consequently, we give special deference to the referee on factual questions 'requiring resolution of testimonial conflicts and assessment of witnesses' credibility, because the referee has the opportunity to observe the witnesses' demeanor and manner of testifying.' " ' "].)

B. Statement of Facts

The following testimony was given at the evidentiary hearing:

Michael Cardoza represented defendant at trial. He testified that prior to trial he was aware of Rivera's claims that Howeth was the intermediary who introduced defendant to Rivera and that Howeth had admitted to Rivera that he had been hired by defendant in the past to commit an assault. Initially, his cocounsel attempted to locate Howeth. Their ability to conduct investigations, however, was made difficult by defendant's lack of candor. He was not forthcoming with information and claimed not to

know "a man by that name." After speaking to the District Attorney, who indicated he had no information about Howeth's location and was not intending to call him as a witness, Cardoza decided Howeth would not be a good witness for the defense and stopped looking for him. Cardoza explained, "[A]s we vetted the case, we thought, . . . if we put Howeth on the stand, he is going to do one of two things: He is going to deny knowing my client, which then in our mind would precipitate two other witnesses coming on. I believe their names were Harbaugh and Kurtz. And [the prosecutor], at some point before trial indicated he was only going to use Rivera. With my experience, I would like the idea of only Rivera testifying . . . because I thought Kurtz and Harbaugh would . . . corroborate what Rivera said, which would, to my mind, take a weak witness and bolster him a little, or [Howeth] could come in and say the opposite [], yes, I do know [defendant] and, yes, we met with him. So I thought what good is this guy going to do us? . . . [W]ith my trial experience, I thought I don't want to see this guy on the stand. He is going to hurt us, and I thought the DA would make deals with him if he already had not . . . . So, I made a tactical decision, I am not putting him on." Cocounsel agreed that a strategic decision was made to avoid Harbaugh and Kurtz's testifying because they had additional evidence that would corroborate Rivera's testimony. She explained that if only Rivera testified, defendant would have to explain only his connections to Rivera and deny involvement in the conspiracy. In response to the court's question regarding what additional details Harbaugh and Kurtz might testify to, cocounsel noted that there were jail calls between Harbaugh, Kurtz and Rivera. Cocounsel and Cardoza also hoped that by avoiding Howeth's testimony they would limit the testimony about the alleged prior assault on defendant's business associate.

An investigator hired by Matthew Siroka, defendant's attorney on the habeas petition, testified that she tracked down Howeth and discovered that he was in jail. When shown photos of Rivera and defendant, Howeth said he did not recognize either of the

men. Howeth also denied knowing Harbaugh and Kurtz. Howeth signed a declaration reiterating that he did not know the four men involved in this case.[5]

Ernest Dotson testified that he met defendant in Santa Rita County Jail in 2013. While in jail, Dotson saw a picture of Rivera in the newspaper. When Dotson encountered Rivera in county jail, he said to him, "Hey, you the guy in the paper. You are Singh's homeboy?" Rivera replied, "That was not my homeboy. That was a job." Then, addressing another inmate in Dotson's presence, Rivera said he got the money for "a setup." Dotson did not say anything to defendant at the time, but later, after learning that defendant was sentenced to a life term, Dotson disclosed to defendant what he had heard from Rivera.

Daniel Rodriguez testified that in 2013, while working as a porter in the county jail, he overheard Rivera, who also worked as a porter, tell a group of four or five other inmates that defendant had been set up by his wife. Although Rodriguez knew defendant at the time, he waited until 2015 when they were incarcerated together at Solano State Prison to tell him what he had heard.

Rivera testified that he worked as a porter in 2014 while being housed in county jail, but denied discussing his case in detail with other inmates or telling anyone that he had set up defendant to take the blame in this case. When shown photos of Rodriguez and Dotson, Rivera said he did not recognize either man. Rivera also testified that Howeth went by the nickname Flaco.

C. Defendant has not established his claim for ineffective assistance of counsel.

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[5] Howeth died before the evidentiary hearing. His declaration was admitted into evidence under Evidence Code section 1202 to impeach Rivera's trial testimony. Defendant argues that the declaration should have been admitted under Evidence Code section 1235 for the truth of the matters asserted. Section 1235, however, provides for the admission of a "statement made by a witness" if it is "inconsistent with his testimony at the hearing." Howeth was never a witness at any hearing. Accordingly, we find no error in the court's ruling. (See *People v. Williams* (1976) 16 Cal.3d 663, 669 ["Morris not having testified at trial—the hearing at which the admissibility of his prior inconsistent statements arose—those statements were not inconsistent with his testimony 'at the hearing.' "].)

Defendant contends that trial counsel's failure to interview and call Howeth as a witness was a prejudicial error that deprived him of his constitutional right to effective assistance of counsel. To establish constitutionally inadequate representation, defendant must show that (1) counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness under prevailing professional norms; and (2) counsel's deficient representation subjected the defense to prejudice, i.e., there is a reasonable probability that but for counsel's failings the result would have been more favorable. (*Strickland v. Washington* (1984) 466 U.S. 668, 687–696.) " 'Reviewing courts defer to counsel's reasonable tactical decisions in examining a claim of ineffective assistance of counsel [citation], and there is a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." '. . . . 'Tactical errors are generally not deemed reversible, and counsel's decisionmaking must be evaluated in the context of the available facts.' " (*People v. Weaver* (2001) 26 Cal.4th 876, 925–926.) " ' "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." ' " (*In re Thomas* (2006) 37 Cal.4th 1249, 1258, quoting *Strickland, supra,* 466 U.S. at pp. 690–691.) However, " ' "strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." ' " (*Ibid.*)

Defense counsel's determination that Howeth would not be a good witness for the defense, no matter his testimony, was reasonable under the circumstances known to counsel at the time the decision was made and the determination made further investigation unnecessary. Defendant's argument to the contrary is not persuasive.

Defendant contends "Cardoza's decision not to investigate Howeth was unreasonable, because the only information he had was that Howeth was a potentially

exculpatory witness." He argues, "Cardoza claimed that if Howeth proved to be an *exculpatory* witness, this would cause the prosecutor to call the other two men who committed the attack to testify. Yet, Cardoza knew that *nothing prevented the prosecution from calling the men in any even*t. He also knew that both Kurtz and Harbaugh had long criminal records, lacked credibility and were unlikely to be viewed positively by the jury; indeed, this is why the prosecutor was disinclined to call them. The possibility of these men testifying could not justify failing to interview and call a potentially exculpatory witness, particularly where the case essentially boiled down to Singh's word against Rivera's." He also argues that trial counsel knew there were allegations that defendant had hired Howeth to injure his former business partner and while counsel claimed to have been "concerned about evidence of this prior incident coming before the jury[,] . . . he failed to interview the very person allegedly responsible for this prior incident."

Cardoza's decision, however, was inherently strategic. As Cardoza explained, he assumed Howeth would deny any knowledge of defendant but he concluded nonetheless that any potential benefit from such testimony would be outweighed by the risk that it might prompt the prosecution to call the additional witnesses or allow the jury to learn more about the prior incident allegedly involving Howeth and defendant. Although he had no guarantee regarding what the prosecution might do, he made this decision based on his extensive trial experience, and it does not strike us as unreasonable. Howeth's declaration gives us no reason to conclude that additional investigation would have altered his calculation.

Moreover, there is no reasonable probability that the result would have been more favorable to defendant had Howeth been called as a witness and denied knowing Rivera. Had Howeth denied knowing Rivera, Rivera's contrary testimony would have been corroborated by the text communications between Howeth and Rivera, including the text indicating that Howeth had a job for Rivera. Defendant's attempt to explain the text evidence away by suggesting that Rivera was using a borrowed phone and Howeth was

texting someone else is not particularly credible. Accordingly, we find no merit in defendant's claim of ineffective assistance of counsel.

D. Defendant has not established that his conviction was based on false evidence.

Penal Code section 1473, subdivision (b)(1) provides for habeas corpus relief if "[f]alse evidence that is substantially material or probative on the issue of guilt or punishment was introduced against a person at hearing or trial relating to his or her incarceration." Defendant contends that "because the entire prosecution case rested on Rivera's testimony, evidence showing [his] testimony was false is grounds for relief." The testimony presented at the evidentiary hearing, however, does not establish by a preponderance of the evidence that Rivera's trial testimony was false. (*In re Richards* (2012) 55 Cal. 4th 948, 976 ["[A] petitioner seeking relief based on false evidence must prove—not 'definitively' or 'absolutely,' but by a preponderance of the evidence—that false evidence was offered against him at trial."].)

The trial judge, who presided over both the trial and the evidentiary hearing on the habeas petition, noted that he had "listened very closely" to the testimony by Dotson and Rodriguez because he was "open to the possibility that . . . this whole story was fabricated by Mr. Rivera" but ultimately found Howeth, Dotson and Rodriguez completely lacking in credibility. The court explained, Dotson "presented in a measured, reasonable and calm way . . . . [H]e expressed no interest in the outcome. What I found in listening to his testimony though was he has so little independent memory of what he was talking about that I wondered if he was testifying to things that he had not actually experienced, if he was repeating a story." The court noted that it was only after counsel reminded him of a fact in his declaration that Dotson would add any detail to his testimony. The judge opined that Dotson was looking to counsel "to fill in the blanks" because "he didn't remember [the conversations] because he didn't experience it." With respect to Rodriguez, the court found that he contradicted himself and was "thoroughly impeached." The court offered the following example: "So paragraph three of Mr. Rodriguez's declaration is to the effect that he was working as a porter. He met Ricardo Rivera who was also working as a porter. They had the same programing, which meant

that they both attended classes and other programs together. Ultimately he took all of that back. He was very not clear about when and how and what he knew about Mr. Singh's case. He testified [on] direct that he first told Singh about his information in 2015 in state prison. His declaration says that he first told this to Singh at Santa Rita." As to Howeth, the court noted that his declaration had been admitted for impeachment, but that even if it had been admitted for the truth, he found it "extraordinarily unreliable," "not believable" and "incredible" and that it would not "be a basis to support the claim of a conviction based on false evidence." The court cited the significant contradictory evidence that established Howeth knew defendant and Rivera, including the cell phone evidence that connected them and defendant's admission in a letter to the court at the end of his trial that he met with a "Vince slash Flaco" prior to the assault. Finally, the court noted that while Rivera may have had little credibility in general, "as to all of the material and key components of Mr. Rivera's testimony, there was corroboration, and there was corroboration in the form of text messages, telephone call records, cell tower records putting people and things in different places."

Defendant contends this court should disregard the trial court's credibility determinations because the court ignored "important factors" including that Rodriguez and Dotson had no connection to this case, no reason to lie about this case and both independently heard similar claims about the case from Rivera. The court did not ignore these factors. The court determined that the witnesses were not telling the truth. As detailed above, the court's determination was based not just on contradictions in their testimony but on careful study of the way in which they answered questions. The court concluded, particularly with regard to Dotson, that he was relating a story that he had been told. Accordingly, the court's credibility findings are amply supported by the record and entitled to deference. Having failed to establish that Rivera's trial testimony was false, defendant is not entitled to relief.

Disposition

The judgment is affirmed and the petition is denied.

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Tucher, J.

We concur:

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Streeter, Acting P.J.

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Brown, J.